

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.12194 of 2014
and M.P.No.1 of 2014

C.Sundaramoorthy

... Petitioner

Vs.

1. The State, rep by
The Inspector of Police,
District Crime Branch
- Tirupur District,
(Ref. Crime No.11/2014
dt. 24.02.2014)

2. K.Vignesh Karthik

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the First Information in Crime No.11 of 2014 on the file of the first respondent police as against the petitioner.

For Petitioner : Mr.Sithirai Anandam

For Respondents

For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.
For R2 : Mr.P.M.Duraisamy

सत्यमेव जयते
O R D E R

This Petition is filed to quash the FIR in Crime No.11 of 2014 registered for the offences under Sections 409 and 420 of IPC.

2. The learned counsel appearing for the petitioner would submit that there are totally four accused in this case, in which the petitioner is arraigned as A1. Even from the allegations made in the FIR, there is absolutely no ingredient to made out for the offences under Sections 409 and 420 of IPC. The main ingredient to attract the offences under Sections 409 and 420 of IPC, as far as the present case is concerned, the property was entrusted to the agent as per the powers assigned

to him vide the Power of Attorney dated 17.10.2012. The another allegation is that on such entrustment, the property sold out for meager price and also not submitted any accounts as per the clause mentioned in the Power of Attorney.

2.1. Further he submitted that the defacto complainant is none other than the Advocate practiced in the Madras High Court. Originally the property in survey number 498/5C ad measuring 22.35 cents (9735 sq.ft) was purchased by the father of the defacto complainant on 28.03.2007, in which, the father of the defacto complainant had sold out the part of the property ad measuring 5248½ sq.ft to one Balamani on 11.02.2008. Thereafter, he mortgaged the remaining property by way of depositing title deed and the same was also subsequently redeemed, for which the petitioner paid a sum of Rs.15 lakhs as advance. The petitioner also entered into agreement for sale with the father of the defacto complainant to purchase the remaining property ad measuring 4486 Sq.ft., for the total sale consideration of Rs.27 lakhs on 01.10.2012. After executing the sale agreement, the father of the defacto complainant had executed the settlement deed in favour of his own son, who is none other than the defacto complainant herein, and the same was registered as Doct. No.2971 of 2012 dated 10.10.2012. After the receipt of the balance sale consideration of Rs.12,50,000/-, the defacto complainant issued receipt for the total sale consideration of Rs.27,50,000/- and also executed Power of Attorney in favour of the petitioner in Doc.No.526/IV/2012 dated 17.10.2012. Thereafter, on 01.11.2012, the petitioner sold out the said property to one Balamani. On 15.11.2012, the defacto complainant knowing the fact that the petitioner sold out the property to the said Balamani, issued legal notice and called upon the petitioner to avoid involving in whatever the manner trying to sell the property to other persons, failing with he will be construed to revoke the General Power of Attorney dated 17.12.2012. Therefore this is nothing but only to grab the property, the present complaint is lodged. Therefore, he prayed to quash the FIR.

3. The learned counsel appearing for the second respondent submitted that Power of Attorney executed in favour of A1 on 17.10.2012, in respect of the said property. Without any consent from the principal, the petitioner sold out the property for very meager price to one Balamani. Further he submitted that the sale consideration is also not paid to the defacto complainant and the petitioner did not even produce any accounts. He also pointed out that there is specific clause in the Power of Attorney that in respect of the property any expenditure or income that has to be properly maintained and the statement of account should be handed over to the principal. Without even producing any accounts, without the consent of the

principal and without the knowledge of the principal, the petitioner sold out the property to the second accused. Therefore he vehemently opposed to quash the FIR.

4. The learned Additional Public Prosecutor would submit that there are four accused and the petitioner is A1. On the strength of Power of Attorney, the petitioner/A1 sold out the land without the consent of the principal ie., the defacto complainant to the second accused. The third and fourth accused are witnesses to the said sale deed. Therefore, the offence under Sections 409 and 420 of IPC are clearly made out as against the petitioner and others. It is only in the FIR stage and it has to be investigated further. Therefore, he prayed for dismissal of this petition.

5. Heard Mr.Sithirai Anandam, learned counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.P.M.Duraisamy, learned counsel appearing for the second respondent.

6. This petition has been filed to quash the FIR Crime No. 11 of 2014 for the offences under Sections 409 and 420 of IPC. There are totally four accused, in which the petitioner arraigned as A1. A2 is the purchaser of the property from the petitioner/A1 and A3 & A4 are stood as witnesses to the sale deed. The allegation is that the defacto complainant executed Power of Attorney in favour of A1 and thereafter A1 sold out the property without the consent of the defacto complainant for very meager price. Further allegation is that the petitioner/A1 did not produce any statement of accounts in respect of the sale of the property and did not pay the sale consideration to the defacto complainant.

7. It is seen that originally the property to the extend of 9735 sq.ft., purchased by the defacto complainant's father by a docu 1451 of 2007 dated 28.03.2007, in which he sold out the part of the property to an extend of 5248½ Sq.ft., to one Balamani. The remaining property was mortgaged by the father of the defacto complainant and to redeem the same the petitioner paid a sum of Rs.15 lakhs to the defacto complainant's father and the property was also redeemed on 09.10.2012. The defacto complainant's father also entered into an agreement for sale with the petitioner on 01.10.2012. It is also seen that the father of the defacto complainant also executed a settlement deed in favour the defacto complainant in Doc.No.2971 of 2012 dated 10.10.2012, for the very same property. Therefore, the petitioner insisted to return of money of Rs.15 lakhs, which was paid by him to redeem the property.

8. In such circumstances, the defacto complainant executed the Power of Attorney in favour of the petitioner, that too after receipt of the balance sale consideration of Rs.12,50,000/- by issuing receipt dated 17.10.2012 for the total sale consideration of Rs.27,50,000/-. Therefore, the entire sale consideration received by the defacto complainant and only thereafter he executed the Power of Attorney. Though the specific clause mentioned in the Power of Attorney, in respect of submitting statement of account, with regard to the expenditure and income over the property, the petitioner already paid the sale consideration to the defacto complainant and his father. In fact subsequently, the petitioner sold out the land to the second accused. It is pertinent to note that the second accused is one Balamani, who initially purchased the part of the property from the father of the defacto complainant. Thereafter, the defacto complainant issued legal notice on 15.11.2012, as if the petitioner sold out the property without his consent. It was properly replied by the petitioner herein, by the reply notice dated 22.11.2012, in which, he narrated all the above facts and denied all the allegations. After the period of two years, the impugned complaint has been lodged by the defacto complainant/second respondent with the same set of allegations. Therefore, the ingredients of the offences under Sections 409 & 420 of IPC are not at all made out as against the petitioner, since the entire transaction is civil in nature. Hence, this Court is inclined to quash the FIR as prayed for.

9. In the result, the Criminal Original Petition is allowed and FIR in Crime No. 11 of 2014 on the file of the first respondent police is quashed. Consequence connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

rts

To

1. The Inspector of Police,
District Crime Branch
Tirupur District,

2. The Public Prosecutor,
High Court of Madras,
Chennai.

+lcc to Mr.S.Sithirai Anandam, Advocate SR.No.13734

CRL.O.P.No.12194 of 2014
and M.P.No.1 of 2014

MG (CO)
GMY (12/03/2019)



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